

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

IN RE: ETHICON, INC. PELVIC REPAIR  
SYSTEMS PRODUCTS LIABILITY  
LITIGATION

Master File No. 2:12-MD-02327  
MDL 2327

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ETHICON WAVE 10 CASES LISTED IN  
EXHIBIT A

JOSEPH R. GOODWIN  
U.S. DISTRICT JUDGE

**ETHICON’S WAVE 10 DAUBERT REPLY REGARDING  
VLADIMIR IAKOVLEV, M.D.**

Defendants Ethicon, Inc. and Johnson & Johnson (“Ethicon”) filed their Motion to Exclude Testimony of Vladimir Iakovlev, M.D. (Dkt. #8075) and Memorandum in Support (Dkt. #8076) based on Dr. Iakovlev’s Wave 10 general report that was changed from his prior Wave reports.<sup>1</sup> Plaintiffs responded by adopting their previous briefing relating to Dr. Iakovlev’s prior Wave reports (Dkt. #8221).

The Plaintiffs do not acknowledge or address the fact that Dr. Iakovlev’s opinions have been excluded in whole or in part at least 29 times in mesh litigation (including by this Court). *See* Def. Memo (Dkt. #8076) at 1.

The Plaintiffs fail to address deposition testimony elicited from Dr. Iakovlev in the years since the Wave 4 briefing the Plaintiffs have adopted, *see* Def. Memo at 4 (citing Ex. K, Iakovlev 4/3/2019 *Susong* Dep. 150:24-151:5 (Dr. Iakovlev “cannot detect oxidation” in the outer layer seen on mesh fibers that he claims is degraded polypropylene)), nor do they address Ethicon’s arguments relating to new literature, *see id.* at 15.

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<sup>1</sup> The page-count alone demonstrates the difference: Dr. Iakovlev’s general report from prior waves was 112 pages (not including his list of references), while his Wave 10 general report is 237 pages (not including his list of references).

The Plaintiffs also fail to address—because the briefing they adopted predated Dr. Iakovlev’s current report—Ethicon’s argument regarding Dr. Iakovlev’s 2018 testimony that he does not know how many of the photographs in his current report depict Ethicon mesh. *See* Def. Memo at 19 (citing Ex. LL, Iakovlev 9/7/18 Dep. 215:11-18, 216:23-217:8, 223:14-22, 226:18-20). Moreover, Plaintiffs’ adopted response cites to Dr. Iakovlev’s use of photomicrographs from Ethicon consolidated and/or Wave plaintiffs that are not found in his Wave 10 report. *See, e.g.,* Pls.’ Resp. at 14 (citing images on pages 84-94 of Dr. Iakovlev’s Wave 1 Report).<sup>2</sup> The response also cites to statements no longer found in Dr. Iakovlev’s report. *See, e.g.,* Pls.’ Resp. at 19-20 (citing page 5 of Dr. Iakovlev’s Wave 1 Report).

Finally, Dr. Iakovlev’s Wave 10 general report included a new section on Ethicon’s Instructions for Use, wherein Dr. Iakovlev opined that certain risks were missing or that the IFUs were misleading. Plaintiffs have provided no response to Ethicon’s motion regarding Dr. Iakovlev’s opinions on these points. *See* Def. Memo (Dkt. 8076) at 20.

To the extent the Plaintiffs’ Response is responsive to Ethicon’s Wave 10 briefing, Ethicon adopts and incorporates by reference their Wave 4 Reply in Support of Motion to Exclude Testimony of Vladimir Iakovlev, M.D. (Dkt. #3865).<sup>3</sup> Ethicon respectfully requests that the Court exclude Dr. Iakovlev’s testimony, for the reasons expressed in its initial briefing.

Dated: June 3, 2019

Respectfully submitted,

/s/ Susan M. Robinson

Susan M. Robinson (W.Va. Bar #5169)

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<sup>2</sup> One of the figures cited by this portion of Plaintiffs’ Response, from page 94 of Dr. Iakovlev’s Wave 1 report, is found in Dr. Iakovlev’s Wave 10 report.

<sup>3</sup> Ethicon’s Wave 4 reply addresses the Wave 4 response that the Wave 10 Plaintiffs have adopted here.

Thomas Combs & Spann PLLC  
300 Summers Street  
Suite 1380 (25301)  
P.O. Box 3824  
Charleston, WV 25338  
(304) 414-1807  
srobinson@tcspllc.com

/s/ William M. Gage  
William M. Gage (MS Bar #8691)  
Butler Snow LLP  
1020 Highland Colony Parkway  
Suite 1400 (39157)  
P.O. Box 6010  
Ridgeland, MS 39158-6010  
(601) 985-4561  
William.Gage@butlersnow.com

COUNSEL FOR DEFENDANTS  
ETHICON, INC. AND JOHNSON & JOHNSON

**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2019, I electronically filed the foregoing document with the Clerk of the court using CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ Susan M. Robinson

Susan M. Robinson (W.Va. Bar #5169)

Thomas Combs & Spann PLLC

300 Summers Street

Suite 1380 (25301)

P.O. Box 3824

Charleston, WV 25338

(304) 414-1807

srobinson@tcspllc.com